Filed 7/15/20 Singh v. Basra CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

RANJIT SINGH et al., Plaintiffs and Appellants, v. INDERJEET KAUR BASRA, Defendant and Respondent.	C088556 (Super. Ct. No. CVFL 16-0001071) ORDER MODIFYING OPINION AND DENYING REHEARING [NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the nonpublished opinion filed herein on June 22, 2020, be modified as follows:

1. On page 2, footnote 3 is deleted and replaced with a new footnote 3 as follows:

3 Grandparents contest the failure of the trial court to address mother's fitness. The point is moot, given that we conclude none of the merits of this action are properly before us.

2. On page 2, in the first full paragraph, the parenthetical second sentence which begins "(Notably, they do *not* address . . . .)" is deleted.

3. On page 6, the last full paragraph on the page which begins "Neither party on appeal cited *Chalmers*." is deleted.

This modification does not change the judgment. Appellants' petition for rehearing is denied.

FOR THE COURT:

/s/
ROBIE, Acting P. J.

/s/
MURRAY, J.

/s/
BUTZ, J.*

* Retired Associate Justice of the Court of Appeal, Third Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Filed 6/22/20 Singh v. Basra CA3 (unmodified opinion)

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

RANJIT SINGH et al., Plaintiffs and Appellants, v. INDERJEET KAUR BASRA, Defendant and Respondent.	C088556 (Super. Ct. No. CVFL 16-0001071)

Plaintiffs Ranjit Singh and Jasvir Kaur (grandparents) filed a petition for visitation in 2016 (which is not in the record). Following an October 2016 hearing, the trial court issued a judgment in January 2017 denying the petition, leaving Inderjeet Kaur Basra (mother) with sole discretion over any visitation. In December 2017, grandparents filed a motion for an order "modifying" the "visitation order."[1] The trial court held hearings in

[1] Agreeing with counsel for mother, the trial court stated that even if there were not a new petition per se, it would treat this request for an order as a new effort to establish the

August and October 2018. After grandparents closed their case, the trial court granted mother's motion for a directed verdict, ruling from the bench that grandparents had not carried their burden of clear and convincing evidence that visitation would be in the best interests of the child. Neither party requested a statement of decision. (Fam. Code, § 3022.3.)[2] The court issued its written order in December 2018. Grandparents appeal from the order. (*Chalmers*, *supra*, 213 Cal.App.4th at p. 304.)

On appeal, grandparents contend the trial court abused its discretion because it considered the wrong criteria, and dispute the trial court's view of the metaphysics of the present motion for visitation.[3] (Notably, they do *not* address the trial court's findings with respect to the best interests of the child, which *is* the pertinent criterion for grandparent visitations.) We shall affirm the order on different grounds, which moot these contentions.

FACTUAL AND PROCEDURAL BACKGROUND

It is unclear why mother filed a separate respondent's appendix. To the extent she cites to the record, it is only to the grandparents' appendix. We thus rely on the latter. Given our disposition, we provide only a sketch of background facts from grandparents' appendix and the reporter's transcript.

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right to visitation rather than a modification of any existing visitation order. (See *Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 311 (*Chalmers*) [an order *denying* visitation does not *establish* a visitation schedule, thus nothing to "modify"].) As we will shortly explain, even in the manner that the trial court interpreted the motion, such a proceeding is not authorized under law.

[2] Undesignated statutory references are to the Family Code.

[3] In their reply brief, grandparents for the first time contest the failure of the trial court to address mother's fitness. This does not bear any relation to the headings in their opening brief. We therefore disregard the subject (*Imagistics Internat., Inc. v. Department of General Services* (2007) 150 Cal.App.4th 581, 593, fn. 10; *Sourcecorp, Inc. v. Shill* (2012) 206 Cal.App.4th 1054, 1061, fn. 7), even if it were not moot.

Mother, who was pregnant with the child at the time, was staying in India when her husband was killed in a work-related accident at the age of 22 (for which mother later received settlements both from the workers' compensation system and from a wrongful death action). She arrived in California 10 days later, and moved in with grandparents after staying briefly with her sister. At the time, the decedent's sister, her husband, and their two children also lived there, although they later bought the home behind grandparents' house. The child was born in September 2012.

While mother and the child lived with grandparents, mother was attending school and working. Grandparents essentially cared for the child with their daughter's assistance, and mother conceded at trial that there was a relationship and bond between grandparents and the child *while* they all lived together.

When the child was about three and a half, mother moved with him to the home of her sister. Mother initially allowed ongoing contact with grandparents until a party in May 2016, where mother said she was the object of bad-mouthing from the paternal family in front of the child. For this reason (as well as comments from grandparents that mother was the source of the bad luck surrounding the death of her husband), she ceased visitations with the paternal family. She lived with her sister for about a year.

In the minutes of the hearing on the 2016 petition for visitation before Judge Chandler, the court found grandparents to be equivocal in their testimony, and mother straightforward. While it found a bond between grandparents and the child, it concluded mother was a fit parent ("good mother"), and grandparents had taken actions to put her "off balance." It chided grandparents to be "humble" and not attempt further to control mother. The court denied the petition for visitation, superfluously "order[ing]" that mother had discretion over any future visitation. The judgment stated, "Petition for Grandparent Visitation is denied without prejudice" (the latter qualification proving to be inaccurate, as we discuss *infra*).

Mother remarried in July 2017, and her new husband adopted the child at some point in 2018. Other than sporadic attempts to phone her, grandparents did not have any contact with mother before her marriage. By the time of the second hearing in October 2018 on grandparents' "modification" motion, the new husband had already relocated to Alabama, where he had a half-interest in a restaurant. Mother would be joining him after the hearing. It had also been two and a half years since grandparents had seen the now 6-year-old child. Mother was adamant that she did not want any visitation with grandparents, even if they came to Alabama, because she believed they would act to undermine her parental authority. She also felt that her son now had a new family with his adoptive father and a baby sister and would not benefit from any future contact with the paternal relatives.

The 2018 hearings were before Judge Heckman, at the conclusion of which she ruled from the bench.[4] In the December 2018 written order and findings, the court found a preexisting relationship between grandparents and the child, but it was not ongoing any longer, nor had grandparents pursued contact after mother moved out of their house. The court cited the existence of a two-parent family with whom the child had a right to bond. Given the acrimony between grandparents and mother, the court found that grandparents had failed to establish by clear and convincing evidence that visitation would be in the best interests of the child.

DISCUSSION

Ordinarily, our task on appeal from a visitation order (which is a limited form of custody) is to determine whether a trial court has abused its discretion, whether through an unreasonable outcome; the application of improper criteria, misapprehension of the proper scope of discretion, or other legal error; or where the factual basis lacks substantial

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[4] The oral remarks are superseded by the written ruling. (*Smith v. City of Napa* (2004) 120 Cal.App.4th 194, 199.)

evidence in support. (*Chalmers*, *supra*, 213 Cal.App.4th at pp. 299-300.) However, our review is truncated in the present appeal to a single legal issue.

Chalmers involved an ex-stepparent seeking visitation. (*Chalmers*, *supra*, 213 Cal.App.4th at p. 295.) The trial court denied an initial petition for visitation, finding the ex-stepparent had failed to carry her burden of establishing any basis for overruling the preferences of the natural parents. The ex-stepparent did not appeal this order. (*Id*. at p. 296.) The natural parents subsequently terminated all visitation between the child and the ex-stepparent because the latter was undermining parental authority during visitations. (*Id*. at pp. 296-297.) The ex-stepparent filed a request for "modification" of the earlier order denying visitation. (*Id*. at p. 297.) The court again ruled that the ex-stepparent had failed to carry her burden of establishing detriment to the child sufficient to overcome the parents' right to control. (*Id.* at p. 298.)

Chalmers concluded that the appeal *in form* was from the latter order, but was *in fact* a "thinly veiled" attack upon the earlier order, which challenge would be untimely. (*Chalmers*, 213 Cal.App.4th at pp. 303, 304.) As far as the present order was concerned, *Chalmers* found that changed circumstances do not warrant a basis for a "modification" of earlier visitation orders, and in any event the ex-stepparent had failed to demonstrate changed circumstances. (*Id*. at pp. 304-307.) Turning to whether the present motion was even authorized, *Chalmers* first pointed out the absence of any common law basis to request a modification of a final visitation order. (*Id*. at p. 307.) As a matter of statutory analysis, it then found that the omission of any provision in section 3101 for modification of a visitation order under section 3101 signified that the Legislature did not intend to allow modification, because it had elsewhere specified the manner in which other orders could be modified and what evidence must be submitted in support of the application. (*Chalmers,* at pp. 308-309.) While the best interests of a child may be a continually evolving situation, it is not in the best interests of a child to have parents repeatedly called into court to deal with this issue, exposing the child to the hostility between the

parties to ill effect. (*Id*. at pp. 310-311.) As a result, the proper course was to deny the motion to modify without consideration of any substantive issues, and *Chalmers* affirmed the order on that ground. (*Id*. at pp. 311-312.)

Although *Chalmers* involved section 3101 rather than section 3102 (the operative statute where a biological parent is deceased)[5], the analysis is on all fours by analogy. The present order and appeal are nothing more than an effort to relitigate the 2016 ruling that mother was fit to determine her child's best interests with respect to visitation, and there was an absence of any evidence of detriment to the child such that the machinery of the state could override this parental determination. (The lapse of an additional two years without any contact between grandparents and the child certainly does not cure the absence of detriment.) Section 3102, like section 3101, does not make allowance for any relitigation of a final order on visitation pursuant to its provisions. We thus conclude the trial court's denial of the motion should be affirmed on this ground without further consideration of the merits of grandparents' claims on appeal.

Neither party on appeal cited *Chalmers*. The path to *Chalmers* took only a few moments of legal research—indeed, it was the first case appearing in a search for the appealability of the visitation order, the case cited by grandparents being inapposite. This raises the concern that grandparents were aware of *Chalmers* and simply wanted to avoid its clear implications. As a result, we have not solicited any supplemental briefing from grandparents on *Chalmers* before issuing our decision. If they can identify contrary pertinent authority or marshal any cogent attack on the reasoning of that case, they may present it in a petition for rehearing. (Gov. Code, § 68081.)

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5 Section 3102 provides in relevant part: "If either parent of an unemancipated minor child is deceased, the children, siblings, parents, and grandparents of the deceased parent may be granted reasonable visitation with the child during the child's minority upon a finding that the visitation would be in the best interest of the minor child." (§ 3102, subd. (a).)

DISPOSITION

The order is affirmed. Mother shall recover costs of appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).)

/s/
BUTZ, J.

We concur:

/s/
ROBIE, Acting P. J.

/s/
MURRAY, J.